IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

CYNTHIA WALKER, KORTESHA MCCOY,
PINKIE COLEMAN, SHAPERRIA CURRY
PATRICK FORD, TIFFANY TAYLOR,
SHALEKA GROSS, CHRISTINA PRICE,
PATRICIA MOBLEY, MARGARET HALE,
AND CHASITY MARR,
Individually, And On Behalf of All
Others Similarly Situated **PLAINTIFFS**

v. **CIVIL ACTION NO. 4:10-CV-119-P-S**

DOLLAR GENERAL CORPORATION,
DOLGENCORP, LLC; AND
DOLGENCORP OF TEXAS, INC. **DEFENDANTS**

FIRST AMENDED COMPLAINT – COLLECTIVE ACTION
JURY TRIAL DEMANDED

Plaintiffs, Cynthia Walker, Kortesha McCoy, Pinkie Coleman, Shaperria Curry, Patrick Ford, Tiffany Taylor, Shaleka Gross, Christina Price, Patricia Mobley, Margaret Hale and Chasity Marr, individually and on behalf of all others similarly situated, complains of Defendants and shows as follows:

I. FLSA COLLECTIVE ACTION OVERVIEW

1. Plaintiffs bring this Collective Action because Defendants have systematically manipulated its Lead Sales Associates and other non-exempt hourly employees to clock out for lunch, but remain on premises available to work (and to actually work) without being compensated for their work in violation of the Federal Labor Standards Act ("FLSA"). Accordingly, Plaintiffs and all similarly situated employees and former employees are entitled to their unpaid compensation, liquidated damages, attorney's fees and costs.

2. The Fair Labor Standards Act ("FLSA") begins with the words: "The Congress hereby finds . . . the existence . . . of labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers . . . ." 29 U.S.C. §202(a). Thus, the basic American belief: "An honest day's pay for an honest day's work" is at the very core of FLSA pay provisions. This principle is so engrained in the American consciousness and so fundamental to the American way of life that it cuts across philosophical lines. Moreover, FLSA exemptions are narrowly construed against employers and only apply to those employees who fit plainly and unmistakably within their terms and spirit. *Auer v. Robbins*, 519 U.S. 452, 462-63 (1997).

3. Employers are required by FLSA to maintain certain records of hours worked and wages paid. 29 C.F.R. § 516. If an employer fails to maintain these required records, the employees are then entitled to use their best good faith estimates of hours worked to compute damages.

4 A unique aspect of the FLSA is that the statute itself provides for claims to be brought collectively by groups of employees. 29 U.S.C. §216(b). These "collective actions" are a form of representative class action. In FLSA collective actions, a lenient "similarly situated" standard is applied to determine whether the class will be certified, whereas in Rule 23 class actions a more difficult four-pronged standard (numerosity, commonality, typicality and adequacy) is used to assess the propriety of class certification.

5. Employees who wish to participate in the FLSA collective action must affirmatively "opt-in" to the case by filing a consent form with the court to join the

lawsuit. The filing of the complaint does not toll the statute of limitations in a collective action. Instead, the statute continues to run for each individual class member until the date that individual's opt-in consent is filed with the court. 29 U.S.C. § 256.

6. The FLSA statute of limitations is two years, but can be extended to three years for "willful" violations. 29 U.S.C. §216(b). Thus, each individual will have a "window of recovery" that extends back at least two years from the date that individual's consent form is filed with the court. Upon a willfulness finding, the window of recovery will be expanded three years back from the day the individual consent form is filed. Moreover, because many employers continue to engage in the challenged conduct even after a complaint is filed, current employees will have a "window of recovery" that reaches back two to three years and extends forward for as many years as the unlawful pay practices continue.

7. Because plaintiffs must affirmatively "opt-in" to an FLSA collective action, a more lenient standard applies to class certification of these claims than the standard that applies to Rule 23 "opt-out" classes. Despite efforts by defendants to impose Rule 23 standards on the certification of 216(b) collective actions, it is clear that the far simpler and easier to satisfy one prong test of "similarly situated" applies to FLSA collective actions. *See, e.g. Grayson v. K-Mart Corp.*, 79 F.3d 1086, 1096 n. 12 (11th Cir. 1996) ("It is clear that the requirements for pursuing a § 216(b) class action are independent of, and unrelated to, the requirements for class action under Rule 23 of the Federal Rules of Civil Procedure").

8. In the first step, which typically takes place at the inception of the case, the plaintiffs must establish through affidavits, declarations and other evidence that they

are "similarly situated" to other current and former employees of the employer with regard to job duties and pay practices. If the plaintiffs meet this initial burden, the court will conditionally certify a class and allow plaintiffs to send notice to similarly situated potential plaintiffs.

II. JURISDICTION AND VENUE

9. This Court has jurisdiction over this action pursuant to 29 U.S.C. § 216(b) and 28 U.S.C. §1331.

10. This Court is a proper venue for this action under 28 U.S.C. § 1391(a)(2) because it is where a substantial part of the events or omissions giving rise to the claim occurred.

III. PARTIES

11. Plaintiff, Cynthia Walker, is a resident of Greenville, Mississippi and was employed as a Lead Sales Associate for Defendant within the three-year period immediately preceding the filing of this Complaint.

12. Plaintiff, Kortesha McCoy, is a resident of Greenville, Mississippi and was employed as a clerk for Defendant within the three-year period immediately preceding the filing of this Complaint.

13. Plaintiff, Pinkie Coleman, is a resident of Rolling Fork, Mississippi and was employed as a clerk for Defendant within the three-year period immediately preceding the filing of this Complaint.

14. Plaintiff, Shaperria Curry, is a resident of Cleveland, Mississippi and was employed as a Lead Sales Associate for Defendant within the three-year period immediately preceding the filing of this Complaint.

15. Plaintiff, Patrick Ford, is a resident of Greenville, Mississippi and was employed as a clerk for Defendant within the three-year period immediately preceding the filing of this Complaint.

16. Plaintiff, Tiffany Taylor, is a resident of Greenville, Mississippi and was employed as a Lead Sales Associate for Defendant within the three-year period immediately preceding the filing of this Complaint.

17. Plaintiff Shaleka Gross is a resident of Jackson, Mississippi and was employed as a Lead Sales Associate for Defendant within the three-year period immediately preceding the filing of this Complaint.

18. Plaintiff Patricia Mobley is a resident of Cross Plains, Texas and was employed as a Lead Sales Associate for Defendant within the three-year period immediately preceding the filing of this Complaint.

19. Plaintiff Christina Price is a resident of Sikeston, Missouri and was employed as a Lead Sales Associate trainee for Defendant within the three-year period immediately preceding the filing of this Complaint.

20. Plaintiff, Margaret Hale, is a resident of Purvis, Mississippi and was employed as a clerk for Defendant within the three-year period immediately preceding the filing of this Complaint.

21. Plaintiff, Chasity Marr, is a resident of Cross Plains, Texas and was employed as a clerk for Defendant within the three-year period immediately preceding the filing of this Complaint.

22. Dollar General Corporation is a foreign corporation with its principal place of business in Goodlettsville, Tennessee. It may be served with process through its

registered agent, Corporation Service Company at: 506 South President Street, Jackson, MS 39201.

23. Dolgencorp, LLC, is a foreign corporation with its principal place of business in Goodlettsville, Tennessee. It may be served with process through its registered agent, Corporation Service Company at: 506 South President Street, Jackson, MS 39201.

24. Dolgencorp of Texas, Inc., is a foreign corporation with its principal place of business in Goodlettsville, Tennessee. It may be served with process through its registered agent, Corporation Service Company d/b/a CSC Lawyers Incorporating Service Company at: 211 E. 7th Street, Suite 620, Austin, Texas 78701-3218.

IV. FACTUAL BACKGROUND

25. Upon information and belief, as of February 26, 2010, Dollar General operates 8,877 stores located in 35 states. Dollar General typically (but not exclusively) serves communities that are too small for Wal-Mart stores. It competes in the dollar store format with national chains Family Dollar and Dollar Tree, regional chains such as Fred's in the southeast, and numerous independently owned stores. In recent years, the company has started constructing more stand-alone stores, typically in areas not served by another general merchandise retailer.

26. The Plaintiffs were employed as Lead Sales Associates, Lead Sales Associate Trainees, or Cashiers for Defendants within the three-year period immediately preceding the filing of this Complaint. The Plaintiffs were employed in geographically diverse locations, specifically Mississippi, Missouri and Texas.

27. Plaintiffs' general duties included performing work as a back-up cashier, stocker, bookkeeper, customer liaison, inventory control clerk and computer support

technician, basically whatever was required of them by their respective Dollar General Store Manager.

28. Dollar General's general company policy regarding lunch breaks was that employees scheduled for more than six (6) but less than (8) hour shifts must take thirty minutes of "unpaid, uninterrupted" lunch break. Employees scheduled for shifts of eight (8) hours or more must take an "unpaid, uninterrupted" lunch break of one (1) hour. It was understood by Plaintiffs and other similarly situated individuals that the manager of the store must consider these breaks in the allowed payroll hours and dollars for each weekly schedule, and may schedule longer breaks or breaks for shifts less than six (6) hours as well.

29. Upon obtaining the position of Lead Sales Associate or Cashier, which entailed being provided with a cash register and office key, Plaintiffs and other similarly situated individuals were informed that they were no longer allowed to leave the store premises during lunch breaks in case they were needed. Dollar General Managers were adamant that during Plaintiffs and other similarly situated individuals' lunch breaks they be clocked out, but since in most instances the Lead Sales Associate was the senior person on duty, they were not allowed to leave the premises for the lunch period. Plaintiffs and other similarly situated individuals were never provided with any written materials pertaining specifically to Lead Sales Associate lunch breaks. And they were not compensated for this time.

30. Rarely did Plaintiffs and other similarly situated individuals' lunch breaks coincide with the shift or presence of the Store Manager, Assistant Manager or another Lead Sales Associate. Thus, in effect, during these supposed "unpaid, uninterrupted"

lunch breaks, Plaintiffs were generally the only Dollar General employee on premises with a cash register and office key, and in effect were the senior store employee present in case any issue requiring more than rudimentary attention arose.

31. During these off-the-clock lunch breaks during which Plaintiffs and other similarly situated individuals were not allowed to leave the Dollar General premises, Plaintiffs and other similarly situated individuals were required to, among other duties, perform job-related tasks that required a manager's key in the register to perform, such as assist junior cashiers with transactions, make change for legal tender too large for the cashier's drawer, provide cashiers with rolled change and/ or dollar bills as necessary, address malfunctioning credit card and/ or check readers, assist cashiers in processing unfamiliar (to them) transactions, and assist cashiers who had pressed an incorrect register key and were unable to get back to the correct place.

32. Furthermore, common job related off-the-clock duties that did not require a manager's key in the register to perform include but were not limited to addressing customer requests to speak to the senior person on duty, answering customer questions regarding such matters as where specific products were located in the store, why certain products were no longer carried, etc. Additionally, it was common that a cashier would get behind, and Plaintiffs and other similarly situated individuals would be needed to "back up cashier" to reduce the number of customers waiting in the line at the register.

33. This is obviously the reason Plaintiffs and other similarly situated individuals were required to remain on site during their lunch breaks. If Plaintiffs and other similarly situated individuals had repeatedly clocked back in to perform these duties, they would have broken the required break policy. Furthermore, Dollar General's time-tracking

system did not allow for repeated clocking in and out for breaks. In any event, because of the nature and extent of these activities, it was not practical or possible to continually punch in and out on the store time clock each and every time Plaintiffs and other similarly situated individuals were required to address one of the matters set forth above.

34. As a result, Plaintiffs and other similarly situated individuals were denied pay for actual (but off the clock) time worked. When Plaintiff Mobley later complained of this and demanded payment, a Dollar General corporate employee was able to determine certain dates and times when off the clock and uncompensated work was performed by apparently tracking the use of the cash register key to lunch breaks in which Plaintiff Mobley was clocked out.

35. Furthermore, as pleaded above, much more additional off-the-clock work was required for which use of the cash register key was not needed.

36. The United States Department of Labor does not mandate that employees be given meal breaks; that is left to the discretion of the employer. However, in the event an employer does require unpaid breaks, the federal regulations set forth what is considered compensable and non-compensable time.

37. According to 29 C.F.R. 768.17, "An employee who is required to remain on call on the employer's premises or so close thereto that she cannot use the time effectively for her own purposes is working 'on call.'" Furthermore, 29 C.F.R. 785.19 states, "The employee is not relieved if he is required to perform any duties, whether active or inactive, while eating. For example, an office employee who is required to eat at his desk or a factory worker that is required to be at his machine is working while eating."

38. Plaintiffs contend that, whether or not they were actually needed to perform some duty on a given day during their lunch breaks (and the vast majority of time they were), they, and such similarly situated Lead Sales Associates should be compensated for off-the-clock lunch breaks where they were required to remain on premises in case they were needed. Thus, Plaintiffs seek recovery on behalf of themselves and all others similarly situated for every off-the-clock meal break where an employee was required to remain on premises in case they was needed.

39. Additionally, if meal periods are interrupted by calls to duty, the entire period must be counted as hours worked. 29 C.F.R. § 785.19. As such, even if Plaintiffs and other similarly situated individuals were not considered to be "on call," these individuals would still be owed for their entire meal periods that were interrupted.

V. COVERAGE

40. Defendants' gross volume of sales exceeds $500,000 per year, exclusive of excise taxes.

41. During the relevant time period, Defendants were an employer engaged in commerce within the meaning of the FLSA.

VI. COLLECTIVE ACTION ALLEGATIONS

42. Plaintiffs bring this case as an "opt-in" collective action on behalf of similarly situated employees of Defendants pursuant to 29 U.S.C. § 215(b).

43. An FLSA claim may be pursued by those who opt-in to this case, pursuant to 29 U.S.C. § 215(b).

44. Plaintiff, individually and on behalf of other similarly situated employees, seeks relief on a collective basis challenging Defendants' failure to properly pay for time

worked by its non-exempt employees who were clocked out during their lunch break but who remained on premises available to perform work on behalf of Dollar General in case they were needed. The effected employees include present and former Lead Sales Associates and Cashiers, but may also include any past and present hourly paid employee acting as a manager on duty when no other management level employees were present, such as temporary or back-up key holders.

45. The number and identity of other plaintiffs yet to opt-in and consent to be party plaintiffs may be determined from the records of Defendants, and potential class members may easily and quickly be notified of the pendency of this action.

46. Plaintiffs are similar to the potential opt-in plaintiffs in the failure to receive monies owed for off the clock work performed for the benefit of Dollar General during lunch breaks.

47. Defendants' failure to pay off-the-clock compensation at the rates required by the FLSA results from generally applicable policies or practices, and Plaintiffs' experience is typical of that experienced by the potential opt-in plaintiffs.

48. The specific job titles or job duties of each potential opt-in plaintiff do not prevent collective treatment.

49. All potential opt-in plaintiffs, irrespective of their particular job duties, are entitled to off-the-clock compensation for all hours worked for the benefit of Dollar General when required to stay on premises during their lunch break.

50. There exists a common nucleus of liability facts.

51. As such, the class of similarly situated potential plaintiffs is properly defined as follows:

> **All current and former Lead Sales Associates and/or Cashiers of Dollar General who, though off the clock, were required to remain on Dollar General's premises during their lunch break, available to perform duties for the benefit of Dollar General, during the three-year period immediately preceding the filing of this Complaint.**

VII. CAUSE OF ACTION

52. Plaintiffs re-allege and incorporates by reference the facts set forth above.

53. At all relevant times, Plaintiffs and all other similarly situated employees have been entitled to the rights, protections, and benefits provided under the FLSA, 29 U.S.C. §§ 201, *et seq.*

54. According to 29 CFR 768.17, "An employee who is required to remain on call on the employer's premises or so close thereto that she cannot use the time effectively for her own purposes is working 'on call.'" 29 CFR 785.19 states, "Bona fide meal periods are not worktime. . . . The employee must be completely relieved from duty for the purposes of eating regular meals. . . . The employee is not relieved if she is required to perform any duties, whether active or inactive, while eating. For example, an office employee who is required to eat at his desk or a factory worker who is required to be at his machine is working while eating." Finally, 29 C.F.R. 785.15 directs, "a stenographer who reads a book while waiting for dictation, a messenger who works a crossword puzzle while awaiting assignments, fireman who plays checkers while awaiting for alarms and a factory worker who talks to his fellow employees while waiting for the machinery to be repaired are all working during their periods of inactivity . . . . In either event, the employee is unable to use the time effectively for her own purposes. It

belongs to and is controlled by the employer. In all of these cases, waiting is an integral part of the job. The employee is engaged to wait."

55. Defendants are subject to the wage requirements of the FLSA because it is an enterprise engaged in interstate commerce and its employees are engaged in commerce.

56. Defendants, pursuant to their policy and practice, willfully violated the FLSA by refusing and failing to pay Plaintiffs and other similarly situated employees all compensation to which they were entitled.

57. Defendants have acted neither in good faith nor with reasonable grounds to believe its actions and omissions were not a violation of the FLSA, and as a result thereof, Plaintiffs and other similarly situated employees are entitled to recover an award of liquidated damages in an amount equal to the amount of unpaid wages.

59. Alternatively, should the Court find Defendants did not act willfully in failing to pay the specified wages, Plaintiffs and all similarly situated employees are entitled to an award of prejudgment interest at the applicable legal rate.

PRAYER

WHEREFORE, Plaintiffs respectfully request judgment be entered in their favor awarding Plaintiffs and all similarly situated employees:

A. compensation for all off-the-clock hours worked;

B. an equal amount as liquidated damages as allowed under the FLSA;

E. reasonable attorney's fees, costs, and expenses of this action as provided by the FLSA;

F. pre-judgment and post judgment interest at the highest rates allowed by law; and

G. such other relief as to which Plaintiffs and the Class Members may be entitled.

Respectfully submitted,

By: /s Nick Norris
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CERTIFICATE OF SERVICE

I, NICK NORRIS, attorney for Plaintiff, do hereby certify that I have this day mailed, via United States Mail, postage fully prepaid thereon, a true and correct copy of the above and foregoing document to the following:

Dollar General Corporation
c/o Corporation Service Company
506 South President Street
Jackson, MS 39201

SO CERTIFIED, this the 12th day of October, 2010.

s/ Nick Norris
NICK NORRIS